IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4324 OF 2006
IN
SUIT NO.484 OF 1986.

Vimla Santramdas Bhojwani & others. ... Plaintiffs.
Versus.
M/s.Restrite Engineering Co.Pvt.Ltd
and another. ... Defendants.

Shri Niranjan Pandit i/by M/s.Joy Legal Consultants for the Applicants/Plaintiffs Nos.1, 2, 4 and 5.

Shri Kirit Mody i/by M/s.S.Pathak & Associates for the Defendant No.1.

Ms.V.K.Shah for Defendant No.2.

CORAM : ABHAY S.OKA, J.

DATED : 6th August, 2007.

P.C.:

1. Heard the learned Counsel appearing in support of the Notice of Motion and the learned Counsel appearing for the 1st Defendant and the 2nd Defendant. The prayer in this Notice of Motion is for setting aside the order dated 14th September 2006 passed by this Court by which the suit filed by the Plaintiff was dismissed for want of prosecution.

2. Submission of the Plaintiffs is that the suit was dismissed on the basis of the statement made by the Counsel appearing for the original Plaintiff stating that she had no instructions from the Plaintiffs. The submission of the learned Counsel for the Plaintiffs is that the said Advocate was never representing the Plaintiffs. The present Plaintiffs are the legal representatives of the original Plaintiff. In fact the

present Plaintiff had engaged Shri Sunil Rawal as their Advocate whose vakalatnama is already on record.

3. The learned Counsel for the 1st Defendant has opposed the Notice of Motion by pointing out that prior to the date on which the suit was dismissed, the same was set down on the board on various dates and none of the Plaintiffs were represented before the Court. He submitted that there was no explanation in the affidavit in support of the Notice of Motion for the absence of the present Plaintiffs on various dates when the suit appeared board. He submitted that the Plaintiffs had knowledge of the dismissal of the suit by the end of September 2006 and there was no explanation for the delay in filing the present Notice of Motion, which was filed on 11th December 2006. The learned Counsel for the first Defendant opposed the prayers made in the Notice of Motion.

4. I have carefully considered the submissions. The order dated 14th September 2006 passed by this Court reads thus:

> "Counsel appearing on behalf of the Plaintiff states that no instructions have been received from the Plaintiff. The suit is dismissed for want of prosecution."

The order discloses that Ms.A.H.Masand, Advocate appeared for the Plaintiffs. The record discloses that the said Advocate did not file vakalatnama on behalf of the present Plaintiffs. It is asserted in the affidavit in support of the Notice of Motion that the Plaintiffs had appointed Mr.Sunil Rawal as their Advocate and his vakalatnama is on record. Thus it is apparent that Ms.A.H.Masand was representing the original Plaintiff who died on 8th August 1996 and therefore, the said Advocate was obviously not appearing for the present Plaintiffs. Therefore, the suit could not have been dismissed on the basis of the statement made by Ms.A.H.Masand, Advocate. Therefore, a case for restoration is made out.

5. On the earlier dates when the suit appeared on board, the Plaintiffs had not appeared before the Court. There is some delay in filing the present Notice of Motion. Therefore, the Plaintiffs will have to pay costs to the Defendants. The Plaintiffs will have to pay costs of Rs.5000/- to the 1st Defendant. Hence Notice of Motion is made absolute in terms of prayer clause (a) subject to the Plaintiffs paying costs of Rs.5000/- to the 1st Defendant within a period of four weeks from today. Payment of costs is a condition precedent. Place the suit on board on 13th September 2007. If there was any interim relief operating till the disposal of the suit, the said order is also

restored.

Judge.